In the Supreme Court of the Hawaiian Islands.

SEPTEMBER TERM, 1893.

THE QUEEN vs. HENRY F. POOR.

BEFORE JUDD, C. J., BICKERTON AND FREAR, JJ.

FOUR INDICTMENTS FOR EMBEZZLEMENT.

The quashing of an indictment does not terminate proceedings which were commenced before a committing magistrate. A second indictment may be presented without a re-examination before the committing magistrate.

Jeopardy does not attach until a jury has been impanelled and sworn, nor unless the indictment is valid.

Failure to prosecute upon an invalid indictment, or at a term of court during which a person is committed by a magistrate, does not operate as an acquittal.

Where a person is committed by a magistrate during one term of the trial court, the term next succeeding the commitment is the next term of the court.

Former acquittal is not a proper ground for a motion to quash.

A plea of former acquittal should show that the same person was acquitted of the same offense in a court of competent jurisdiction upon a valid indictment, and should be supported by proper evidence.

OPINION OF THE COURT BY FREAR, J.

The defendant was committed by the Police Justice of Honolulu on the 7th day of July, 1892, for trial before the next term of the Supreme Court. At that date the said Court was in session, holding the regular July term. On July 29th, five indictments were found against defendant and presented to the Court. On July 30, 1892, the last day of the term, the defendant filed a motion to quash the indictments on the ground that they had not been presented by an officer having any legal authority to present the same, the indictments having been signed by H. A. Widemann, as Attorney-General *ad interim* by his deputy, Chas. Creighton. The question was reserved for the Supreme Court in Banco. The motion was sustained by a decision of that Court filed October 15, 1892. At that date the regular term of the Supreme Court was being held. On the 28th of October, 1892, five indictments were presented and the defendant was allowed until the January term, 1893, to plead. In the meantime the new Judiciary Act came into force and the said January term was not held, but by law all cases returnable at that term went on the calender for the February term, 1893, of the Circuit Court of the First Circuit. At that term these cases were by order of the Court continued until the May term, at which term the defendant demurred to the indictments. The above statement of facts is taken from the decision of this Court rendered in these cases July 25, 1893. The demurrer was overruled by the Circuit Court in a decision filed June 13, 1893. Exceptions were taken to the ruling of the Circuit Court, but this Court, for reasons stated in its decision above referred to, declined to entertain the exceptions. It would seem from the briefs of counsel that the defendant was tried on one of the indictments at the last August term of the Circuit Court, the trial resulting in the acquittal of the defendant on the 9th of said month. On the 15th of the same month the defendant moved to quash the remaining four indictments, and the questions raised by these motions were reserved by the Circuit Court for the decision of the Supreme Court.

The reasons assigned for quashing the indictments will be taken up in their order.

"First: — That all proceedings which were commenced before the Police Judge of Honolulu as a committing magistrate in July, 1892, came to an end with the decision of the Supreme Court sustaining the motion to quash made at the July term, 1892, of said Supreme Court."

The Court, in allowing the motion to quash, held in effect that the indictments were void,—because presented by no officer having authority to present the same. This being so, the case stood as if no indictments had been presented. The proceedings upon those particular indictments came to an end; but, being nullities, they could not vitiate other proceedings which were properly taken.

"Second:—That defendant having had one indictment presented against him at said July term of the Supreme Court was thereby placed in jeopardy and cannot therefore be so placed again."

Our Constitution does not contain the provision found in the constitutions of most of the United States, that no person shall be put twice in jeopardy for the same offense, but it provides, as is the case with a number of the constitutions of the United States, that "no person shall be required to answer again for an offense, of which he has been duly convicted or of which he has been duly acquitted." It is unnecessary for us to consider whether there is any substantial difference between these provisions, for it is well settled that a person is not put in jeopardy by the presentation of an indictment which is so defective that no valid judgment can be rendered upon it, nor until a jury has been impanelled and sworn. Cooley, Const. Lim. (6th Ed.), page 399; 11 Am. & Eng. Encyc., pp. 926, 930, 933. In the present case the quashed indictments were utterly void, and no jury was impanelled or sworn.

"Third:—That the failure to prosecute upon the indictment found at said term operates as an acquittal of the accused."

The indictments being void, failure to prosecute upon them could not operate as an acquittal. There could be no legal prosecution upon them. Further, the statute (Sec. 3, Ch. XL., Laws of 1876) provides that "the failure to prosecute upon the indictment if found at the ensuing term of the court," except in certain cases, "shall operate as an acquittal of the accused." The commitment having been made during the July term, the ensuing term was the October term, and consequently a failure to prosecute at the July term was not a failure to prosecute at the ensuing term.

"Fourth:—That the presentation of the present indictment was deferred beyond the term of the court next succeeding the committal."

In point of fact the present indictments were presented at the October term, which, as shown above, was the term of the court next succeeding the committal.

"Fifth:—That defendant should be discharged, as he has already been acquitted of the same offense on Wednesday, August 9th, 1893, and now pleads *autrefois acquit*."

Former acquittal is not a proper ground for a motion to quash. It is a distinct plea in bar. It should set out the facts which show that the defendant has been formerly acquitted of the same offense in a court of competent jurisdiction upon a valid indictment, and should be supported by proper evidence. The pleas filed in these cases do not contain averments of the facts constituting jeopardy; the record in the former case is not adduced in support of the plea; nor is there any evidence before this Court to enable us to pass upon the identity of the person or of the offense, or upon the competency of the court or the validity of the indictment. We therefore cannot consider this plea.

The motion to quash should be overruled.

F. M. Hatch for the prosecution; G. K. Wilder, Deputy Attorney-General, with him; A. P. Peterson for defendant.

Honolulu, November 3, 1893.

A Duty on Sugar.

A duty of two cents a pound on all imports of sugar would bring to the federal treasury the enormous revenue of $80,000,000 a year. To this must be added a saving of $10,000,000 in sugar bounties, should this duty be imposed. The statesman and financier, looking around for means of covering a threatened treasury deficit, must hold in favorable consideration the source of such vast fiscal revenues, so easily collected, and imposing so light a burden on taxpayers. To the planters of cane sugar in Louisiana and the growers of beet sugar in Nebraska it makes little or no difference whether the "protection" be in the form of a bounty or of a duty. In fact, the producers of domestic sugar would prefer the indirect protection of a duty to going every year to the treasury and suing, "in forma pauperis," for public maintenance and support.

But whether the duty on sugar be two cents or half a cent a pound, there should be no discrimination in the rate between the raw and the refined article. By making the rate of duty low, and at the same time uniform and specific, it would be impossible for the sugar trust longer to despoil American consumers. So soon as the trust should undertake to "corner" the domestic market for sugar, foreign sugars would flow in to preserve the equilibrium of price.

A uniform specific duty of one or two cents a pound on sugar would amply protect planters and refiners while bringing into the public treasury a large revenue. A uniform rate of duty on all sugar imports would at the same time protect American consumers from a rapacious monopoly. — Philadelphia Record.

A Sportsman's Douceur.

Mr. Wm. M. Cunningham, the well-known sportsman of this city, forwarded by the S. S. Australia to the Golden Gate Park Commissioners of San Francisco, a beautiful pair of silver pheasants, purchased by him personally for that object. The produce of birds forwarded by him, is, by his arrangement, presented by the Park Commissioners to local sportsmen of San Francisco.

The last presentation, previously made by Mr. Cunningham, elicited the following acknowledgment, which explains itself:

OFFICE COMMISSIONERS GOLDEN GATE PARK, Aug. 26, '93.

W. M. CUNNINGHAM, ESQ., Honolulu, H. I.

DEAR SIR:—The Board of Park Commissioners highly appreciate your kindness in donating the pheasants to the Park, and they tender to you their thanks.

I remain, very respectfully,
V. V. BLOCH, Sec'y.

First Citizen—Why should the English people be so anxious to capture the America's cup? It cost only about $250 in the first place.

Second Citizen—But you forget what they have spent since 1851 in trying to get it.

SCARLET FEVER.

Second Case of the Disease Break Out in Hilo.

A trip to the volcano is a luxury the Hilo people do not often treat themselves to, unless it is to show a guest the way to our world-wonder or to take a vacation. But the novelty of driving through on wheels, and the honor of being the first party to make the journey in that way, tempted all those who were invited by Mr. J. A. Wilson, and who could either furnish rigs or secure a seat in the wagon to accept. The party assembled in front of the Volcano stables and started punctually at 2 o'clock on Thursday afternoon, the 19th ult. Wilson's large three-seated "Concorn wagon," drawn by four horses, leading the van. After passing Waiakea, where another vehicle was added to the line of procession, included one Concord wagon, four brakes, one buggy, a two-seated buck-board and two horse-back riders—Miss Parke and Miss Severance on horse-back—escorted the party as far as the first woods. The afternoon could not have been improved if made to order. Sunshine, tempered by a cool breeze from the ocean, the drive was rendered more enjoyable by the company and good nature prevailing—all seemed bent on having a good time. The Olaa pioneers disposed of the party for the night.

It is astonishing to note how rapidly the arts of civilization and progress follow the completion of a good carriage road. Two years ago this was a trackless jungle; now pleasant homes are scattered and the land is fast being converted into cultivated fields.

An early start was made the next morning, the teams being on the road before 7 o'clock, and the early drive over a smooth graded road through this most beautiful of tropical forests was delightful. The carriages kept the new road to about the twenty-fifth mile where a new jail and camp are being built for the road gang, and then took the old trail, which though by no means smooth still was passable, and the horses were able to go at a good walk.

All the teams were again brought into line within half a mile of the volcano house and trotted to the finish in fine style, arriving at 10:30 o'clock A. M., having passed over the difficult part of the road in less than two hours.

J. Silva, our Hilo photographer, took several views of the party in their vehicles.

It would occupy more space than the limits of this article warrant to describe the pleasant afternoon and evening spent at the volcano house.

Excursions were made to "Kilaeua Iki" and the sulphur banks, and a few rode to the burning lake, but the majority of the party were kamaainas and preferred the solid comfort of the hotel.

All returned to Hilo the next day, Saturday, leaving the volcano at about 8:30 o'clock, stopping one hour for lunch at "Mountain View," and reaching Hilo at 3:30 o'clock.

Scarlet fever has broken out in town, and people are becoming alarmed. An epidemic of this fearful disease is to be dreaded.

Miss H. C. Hitchcock was taken down with scarlet fever last week, Thursday. Every precaution is being taken to keep the disease from spreading.

Hilo, Oct. 30.

A Trim Little Launch.

A five-ton gasoline launch arrived yesterday on the bark Albert from San Francisco. The launch was built by the Union Gas Company of San Francisco, and is owned by Mr. Charles Gay, of Makaweli, Kauai. Its dimensions are 30 feet long, 6 feet beam, and 4 feet deep. The boat weighs 1470 pounds. The engine is very simple, yet it developes an extraordinary power for so small a craft. In front of the engine is a windlass for hauling in fishing lines and nets. The launch will be used for fishing and for pleasure.

From a communication read to the Association of Belgian Chemists it seems that continental bakers are in the habit of mixing soap with their dough to make their bread and pastry nice and light. The quantity of soap used varies greatly. In fancy articles, like waffles and fritters, it is much larger than in bread. The soap is dissolved in a little water; to this add some oil, and the mixture, after being well whipped, is added to the flour. The crumb of the bread manufactured by this process is said to be lighter and more spongy than that made in the ordinary way.